

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X

4 UNITED STATES OF AMERICA, : 12 CR 50

5 :

6 -against-

7 :

United States Courthouse  
Brooklyn, New York

8 NICHOLAS SANTORA  
9 ANTHONY ROMANELLO

10 :

11 Defendants. : May 1, 2012  
12 : 11:30 o'clock a.m.

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14 TRANSCRIPT OF ARRAIGNMENT  
15 BEFORE THE HONORABLE CAROL BAGLEY AMON  
16 UNITED STATES CHIEF JUDGE

17 APPEARANCES:

18 For the Government:

LORETTA E. LYNCH  
United States Attorney  
BY: JACK DENNEHY  
AMIR TOOSSI  
Assistant United States Attorneys  
271 Cadman Plaza East  
Brooklyn, New York

22 For the Defendants:

RICHARD REHBOCK, ESQ.  
Attorney for N. Santora

24 MATHEW MARI, ESQ.  
25 Attorney for A. Romanello

1 Court Reporter: Gene Rudolph  
2 225 Cadman Plaza East  
3 Brooklyn, New York  
4 (718) 613-2538

5 Proceedings recorded by mechanical stenography, transcript  
6 produced by computer-aided transcription.

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9  
10 THE CLERK: United States against Romanello and  
11 Santora.

12 Please state your appearances for the record.

13 MR. DENNEHY: For the government, Jack Dennehy and  
14 Amir Toossi.

15 Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. MARI: For Anthony Romanello, Mathew Mari,  
18 M A R I.

19 Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. REHBOCK: For Nicholas Santora,  
22 Richard A. Rehbock.

23 Good morning, Your Honor.

24 THE COURT: Good morning.

25 I understand that there has been a superceding

1 indictment, that Mr. Romanello was added and has already been  
2 arraigned. Is that correct?

3 MR. MARI: Yes, that is correct, Your Honor.

4 THE COURT: All right. Mr. Santora has not been  
5 arraigned on the superceding indictment, is that correct?

6 MR. REHBOCK: That is correct, Your Honor.

7 THE COURT: Mr. Rehbock, have you been over the  
8 superceding indictment with your client?

9 MR. REHBOCK: Yes. I discussed it with him, yes.

10 THE COURT: Does he waive a formal and public  
11 reading?

12 MR. REHBOCK: Yes, Your Honor.

13 THE COURT: How does he plead?

14 MR. REHBOCK: Not guilty.

15 THE COURT: Okay. We have a trial date and a jury  
16 selection, Mr. Dennehy.

17 MR. DENNEHY: Yes, Your Honor.

18 Your Honor, this case, as you well know, was set  
19 down for trial. Five of the six defendants in the original  
20 indictment have entered pleas. Mr. Santora indicated that he  
21 did not wish to avail himself of a plea offer.

22 In focusing then on the evidence that the government  
23 is in possession of as to Mr. Santora, there is  
24 evidence -- a cooperating witness that had been working with  
25 the FBI had made numerous recordings which are the subject of

1 the superseding indictment charges as to Mr. Santora and  
2 Mr. Romanello. Due to security concerns and logistics about  
3 the efficacy of that cooperating witness remaining proactive,  
4 decisions were made with the FBI and last week that  
5 cooperating witness was relocated for his own security. His  
6 information was presented to a grand jury and this superseding  
7 indictment was returned.

8 THE COURT: This has new discovery then?

9 MR. DENNEHY: It does, Your Honor.

10 This particular individual made in excess of 70  
11 recordings during the course of his time cooperating with the  
12 government.

13 THE COURT: The reason we decided not to bring this  
14 to the Court and the defendant's attention sooner was what?

15 MR. DENNEHY: Mr. Santora indicated that he wished  
16 not to avail himself of a plea and to go to trial. That  
17 person's information was looked into. The decision was made  
18 either to seek a protective order from the Court not to  
19 disclose it and protect that informant's identity, or to pull  
20 that informant from the street, relocate him and use his  
21 information proactively.

22 THE COURT: Would this information have to be turned  
23 over? I take it, would have had to have been turned over if  
24 Mr. Santora was going to trial on Monday on the original  
25 indictment, correct?

1 MR. DENNEHY: Or in the alternative, if the Court  
2 had signed a protective order based on the fact that the  
3 witness was still being used proactively and that his safety  
4 could be compromised were those materials disclosed.

5 THE COURT: Shouldn't that protective order have  
6 come sometime ago, Mr. Dennehy, at the beginning of this case?  
7 Discovery was turned over earlier.

8 MR. DENNEHY: That is correct.

9 When I was assigned to this case, Your Honor, and it  
10 was decided that the only defendant still going to trial was  
11 Mr. Santora, I investigated the evidence in the government's  
12 possession regarding Mr. Santora and decided whether or not to  
13 seek either a protective order or to use his information.  
14 Consultation was had with the FBI and the decision to use his  
15 information was made.

16 THE COURT: My only point is --

17 MR. DENNEHY: I understand the Court's point.

18 THE COURT: -- that it's all one government and  
19 presumably the other earlier Assistants should have known  
20 about this. This is because it creates scheduling issues --

21 MR. DENNEHY: I certainly understand, Your Honor.

22 THE COURT: -- and other issues.

23 MR. DENNEHY: The fact of the matter --

24 THE COURT: I understand from your letter this  
25 morning that Mr. Romanello has also pled guilty in another

1 case before Judge Glasser?

2 MR. DENNEHY: Yes, Your Honor.

3 I did file this letter on ECF. I have handed up a  
4 copy to the Court and also to defense counsel and I will  
5 provide a copy to Judge Glasser's chambers as well.

6 Mr. Romanello in the case before Judge Glasser had  
7 pleaded guilty to charges involving RICO conspiracy. He is  
8 due to be sentenced on May 18th before Judge Glasser.

9 THE COURT: And a plea agreement?

10 MR. DENNEHY: Via a plea agreement which in fact was  
11 a 11(c)(1)(b) type plea agreement.

12 THE COURT: It didn't cover this?

13 MR. DENNEHY: No, Your Honor.

14 In that case I can state that there was a protective  
15 order signed regarding this particular individual's  
16 information in the Romanello case before Judge Glasser.

17 MR. MARI: Judge, that matter will be disputed on  
18 paper, motion will be made to dismiss these current charges  
19 based upon the plea agreement in Judge Glasser's case.  
20 Just -- if Your Honor wishes to hear from me now? Shall I  
21 wait?

22 THE COURT: No. I take it, you've -- that is a  
23 motion you intend to make though.

24 MR. MARI: Absolutely, Judge. The first order of  
25 business is to do that.

1 I can tell the Court that Mr. Dennehy was the lead  
2 counsel in that case in front of Judge Glasser, which was  
3 going on for a year and a half. It was a very contentious  
4 case. On the eve of trial we agreed to a plea which would  
5 expose Mr. Romanello to ten to 16 months in jail and that -- I  
6 may say to the Court, those charges were charges that went  
7 back to 1999 and we were about to go to trial on that.

8 The government continually was adding ancient  
9 charges, nothing new, nothing recent, nothing within the last  
10 five years, and we made an agreement and we thought that  
11 everything was covered and that Mr. Romanello was finished and  
12 we pled to the RICO conspiracy, the Genovese enterprise, to  
13 cover -- it was an extortion case too there, and we may be  
14 wrong and they may be right, but I spoke to Mr. McMahon  
15 yesterday. Mr. McMahon and I are on trial in front of Judge  
16 Forest in the Southern District of New York at this very  
17 moment and I just left here to appear today. But that's the  
18 first order of business.

19 Certainly, we need to get discovery on this case and  
20 we need to make motions, including perhaps suppressing the  
21 tapes. Possibly we may make a motion to sever Mr. Romanello  
22 from this case. I think if that happens, everything will go  
23 smoothly.

24 I can honestly say to you, we don't know what these  
25 charges are about. But if there is any kind of proof, if the

1 government could convince us that they have a substantial  
2 case, our probable course of action after we make all our  
3 motions, get some discovery and find out what this is about,  
4 it's not out of the question for us to hope that we might get  
5 this back before Judge Glasser and put everything together and  
6 see what we could do to resolve this thing instead of facing  
7 another trial.

8           We prepared for trial in Mr. Romanello's case for a  
9 year and a half and I could tell Your Honor that more work  
10 went in that case than any other case I've been in that has  
11 not gone to trial.

12           We resolved it. We resolved it amicably. The  
13 government was satisfied, Mr. Romanello was satisfied, Judge  
14 Glasser was satisfied. And now I don't mean to use this word  
15 in a pejorative sense, we kind of have been broadsided by  
16 this, another old case where the conduct alleges from 2008 and  
17 we wonder after all we had been through in Mr. Romanello's  
18 case in front of Judge Glasser why wasn't that brought up?  
19 They brought up things that were so farfetched and so far away  
20 from the original indictment that even Judge Glasser commented  
21 on it. He said that the new charges were a totally new  
22 indictment that were being brought in to prove the enterprise.

23           I am hoping -- I don't know why this happened. But  
24 I am hoping that we can get together with the government and  
25 resolve this. But certainly we don't need to be brought into



1 a situation, which is a trial ready situation with regard to  
2 the codefendant.

3 THE COURT: Mr. Rehbock, we have a trial with the  
4 selection of a jury on Monday and trial to follow the next  
5 week. What is your position?

6 MR. REHBOCK: I am hesitant to involve Your Honor  
7 with plea negotiations, but we have tried to resolve this. I  
8 don't want to get into the problem of timing is -- I suspect.  
9 But with these new charges, I don't think that we can go to  
10 trial next week or the 7th and the 14th, because they are  
11 brand new charges. I know nothing about them. My client knew  
12 nothing about them until this morning.

13 THE COURT: There are 70 recordings, is that what  
14 you said?

15 MR. DENNEHY: That witness made in excess of 70  
16 recordings. They all be provided to the defense, Your Honor.  
17 We have isolated the relevant recordings as to these charges.  
18 Clearly, they are entitled to all of his recordings for  
19 informational purposes, Giglio purposes.

20 THE COURT: How did you think that Mr. Rehbock and  
21 his client were going to be ready for jury selection on Monday  
22 and trial a week from then in light of this?

23 MR. DENNEHY: Your Honor, as I stated, this decision  
24 was made last week to take this cooperating witness off the  
25 street and move him for his security. He has viable valid

1 information that was presented to a grand jury that returned  
2 this indictment against both of these defendants. The crime  
3 is within the Statute of Limitations. It's something that the  
4 government would be derelict if it was not charged, if we had  
5 the information in our possession. It is not done for  
6 scheduling or any other purpose. It is a viable valid charge  
7 returned by the grand jury.

8 THE COURT: I know. It is just that I have  
9 problems, Mr. Dennehy, and this isn't the first time, with the  
10 government beginning to focus at what one might call the  
11 eleventh hour on a case. It is disruptive. It is not the  
12 first time that the government does this.

13 MR. DENNEHY: In this particular case, Your Honor,  
14 this informant was proactively working with the FBI up until  
15 last month. It is not a case of looking under the rocks for  
16 old evidence. This was an active, proactive investigation  
17 that decisions were made about when best to take it down and  
18 to relocate him and that was done here.

19 THE COURT: That doesn't explain why the government  
20 didn't come for a protective order though, does it?

21 MR. DENNEHY: No, it does not.

22 THE COURT: Mr. Dennehy, what do you think that the  
23 Court should do here? You give me your idea of how we  
24 proceed.

25 MR. DENNEHY: We have sent these relevant

1 recordings, Your Honor, to a transcription service, to make  
2 draft transcripts of them. I am going to provide them all to  
3 defense counsel this week. I don't want speak for defense  
4 counsel. Mr. Mari has indicated an intention to possibly  
5 resolve this case. I don't know what Mr. Santora's position  
6 is with a possible chance to resolve it for plea negotiations.  
7 But I will provide this discovery to the defense  
8 expeditiously. We will focus it and narrow it down to the  
9 extent we can for them but, obviously, as Mr. Rehbock states,  
10 they are going to need to review it and digest it and  
11 decide --

12 THE COURT: When is it going to be available?

13 MR. DENNEHY: The recordings are being copied as we  
14 speak, Your Honor. The relevant ones will be turned over  
15 today. The totality of them will be turned over this week or  
16 made available at a duplication company and as soon as we have  
17 transcripts of the relevant pieces of recordings that are  
18 relevant to the crime in the superseding indictment, we will  
19 turn those over as well.

20 MR. REHBOCK: The only comment I have to make is  
21 turned over to a development company for us to purchase.  
22 Mr. Santora has no money whatsoever, Judge, none. And he was  
23 previously CJA. I was brought in to the case.

24 THE COURT: You are not CJA.

25 MR. REHBOCK: No, no. Mr. Hochbaum was. I came

1 into --

2 THE COURT: He retained a lawyer?

3 MR. REHBOCK: Yes. But I am going to state to Your  
4 Honor, he has absolutely no money and that if the government  
5 wants to make this available to us, I ask that you -- that you  
6 enter an order that he may get them free of charge. He has  
7 qualified otherwise and, quite frankly, I have -- I am  
8 reluctant to go on the record. But I haven't been paid  
9 anything, Judge. That is not a bar to me actively pursuing  
10 this case, like I would if it was otherwise. I am just  
11 talking about the financial situation of this man. I would  
12 never use it as an excuse of shirking my duties because I  
13 didn't get paid.

14 I didn't want to bring out this whole thing, but it  
15 is the whole thing about are we going to get hung up further  
16 not receiving these copies from this company that does the  
17 duplication because we have to pay them. That will cause us a  
18 further problem.

19 I ask that he be permitted these copies free of  
20 charge.

21 THE COURT: Who he is going to pay for them, the  
22 government? Are you asking the government to -- can you make  
23 a copy of them and give them to the defendant under these  
24 circumstances?

25 MR. DENNEHY: Certainly, Your Honor.

1           As to these 15 or 18 of the relevant recordings, we  
2 are coping those in-house, as I said, as we speak. They will  
3 be turned over today. The bulk of them, which would  
4 constitute the witness' otherwise Rule 16 and Giglio  
5 materials, I will do what the Court directs. As I say, it  
6 will be the government I guess paying for it then.

7           THE COURT: Why doesn't the government provide all  
8 of it at this point in time at its expense, just because of  
9 the delay that it has caused. I would ask the government to  
10 do that.

11           THE CLERK: I'm sorry. Is there a date by which --

12           THE COURT: You said Friday, right?

13           MR. DENNEHY: They will be available at the end of  
14 the week, yes.

15           THE CLERK: All of the recordings?

16           THE COURT: All of the recordings?

17           MR. DENNEHY: All of the recordings, yes.

18           THE COURT: Mr. Mari, you have suggested that before  
19 motions are due that you are going to discuss the matter with  
20 the government.

21           Mr. Rehbock, are you still discussing a disposition  
22 with the government on behalf of your client?

23           MR. REHBOCK: Judge, I sent them --

24           THE COURT: No. I am just asking, are you going to  
25 continue that?

1 MR. REHBOCK: The answer is yes.

2 We were ready to move forward on that.

3 THE COURT: Why don't we do this. Why don't I put  
4 this over for a status conference before we get into dealing  
5 with motions and setting a trial date on the hopes that we  
6 will have further discussions.

7 Does that make sense?

8 MR. MARI: Yes.

9 MR. REHBOCK: Yes, Your Honor.

10 MR. DENNEHY: Yes.

11 THE COURT: Mr. Dennehy?

12 MR. DENNEHY: Yes.

13 THE COURT: You agree with that?

14 MR. DENNEHY: Yes.

15 THE COURT: May we have a date about two weeks from  
16 now?

17 MR. MARI: Judge, we are on trial, Mr. McMahon and  
18 I, and we get Fridays off.

19 THE COURT: Okay.

20 MR. MARI: I am anticipating we should be concluded  
21 by the 14th, at the latest. Mr. Romanello has to appear in  
22 front of Judge Glasser at 11:00 am on the 18th. Would it be  
23 inappropriate to put this case on for that same day?

24 THE COURT: If I have the time.

25 MR. REHBOCK: If it's the afternoon, Judge. I have

1 to be before Judge Wexler. The one day I have on my calendar,  
2 I have to be before Judge Wexler at 11:00 o'clock out in  
3 Central Islip.

4 THE COURT: We can put it on at 3:00 o'clock.

5 MR. MARI: That would be fine.

6 THE COURT: 3:00 on the 18th.

7 MR. REHBOCK: That should be enough time for me.

8 THE COURT: I will exclude time on Mr. Romanello,  
9 continue to exclude time for Mr. Santora, ongoing plea  
10 negotiations.

11 MR. REHBOCK: No objection whatsoever.

12 MR. MARI: Consent, Your Honor, yes.

13 THE COURT: Okay.

14 MR. REHBOCK: I just -- we have three dates.

15 THE COURT: You don't have to come -- the fourth is  
16 off. The jury selection is off.

17 You are not seeking to go forward? You want the  
18 time?

19 MR. REHBOCK: Yes.

20 THE COURT: Correct, Mr. Rehbock?

21 MR. REHBOCK: Yes. I just want, so the record  
22 somehow finds its way clear, that we do not have to appear the  
23 fourth, seventh or fourteenth.

24 THE COURT: No. From what I am gathering, you are  
25 not insisting, you don't want to go to trial on --

1 MR. REHBOCK: Not this.

2 THE COURT: -- on the underlying charges?

3 MR. REHBOCK: Not next week, yes, ma'am, that's for  
4 sure.

5 THE COURT: Okay.

6 MR. REHBOCK: I'm sorry to belabor. I just wanted  
7 to make the record clear, that we don't have to appear.

8 THE COURT: I understand that. That's fine.

9 MR. MARI: 3:00 pm, May 18th.

10 THE COURT: Yes. I will see everyone then.

11 MR. MARI: Thank you very much, Your Honor.

12 MR. REHBOCK: Thank you, Your Honor.

13 (Matter concludes.)  
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